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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65940; File No. SR-Phlx-2011-162)

December 12, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the single contra-side order Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I, Part A of the Exchange's Fee Schedule. The Exchange also proposes to amend the rebates and fees applicable to electronic auctions and the opening process.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission's website at <http://www.sec.gov> and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I of the Fee Schedule, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," at Part A, entitled "Single contra-side orders," to amend certain Rebates for Adding Liquidity and Fees for Removing Liquidity to both attract additional order flow to the Exchange and recoup costs for offering certain rebates to attract liquidity.

Currently, Section I of the Fee Schedule applies to certain select symbols.³ Section I is comprised of a Part A, single contra-side order fees, and a Part B, Complex Order fees.⁴ By way of example of the application of Parts A and B, if one component of a Complex Order is a buy order that trades with a sell order, the sell order is a "simple" or non-Complex Order subject to

³ Select symbols shall be defined as options overlying the following symbols: AA, AAPL, ABX, AIG, ALL, AMD, AMR, AMZN, AXP, BAC, BRCD, C, CAT, CIEN, CSCO, DELL, DIA, DRYs, EBAY, EK, F, FAS, FAZ, FXI, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, NVDA, ORCL, PFE, PG, POT, QCOM, QQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SLW, SMH, SNDK, SPY, T, TBT, TZA, UAL, UNG, USO, UUP, UYG, V, VALE, VXX, VZ, WYNN, X, XLF, XOM, XOP, XRX and YHOO ("Select Symbols"). These symbols are Multiply-Listed.

⁴ The Rebates and Fees for Adding and Removing Liquidity in Select Symbols will continue to apply only to electronic orders.

the fees in Part A of Section I of the Fee Schedule and the buy order is a Complex Order subject to the fees in Part B of Section I of the Fee Schedule.

The Exchange is also proposing to amend the rebates and fees for electronic auctions and the opening process by defining the electronic auctions and the opening process as either Complex or non-Complex and applying Part B rebates and fees to the Complex electronic auctions and Part A rebates and fees to the non-Complex electronic auctions, including the opening process. The Exchange proposes these amendments to align the fees for electronic auctions and the opening process with other rebates and fees, as either Complex or non-Complex. The Exchange is not proposing to amend the Complex Order fees in Part B, but does propose a technical amendment to Part B as described below.

There are currently several categories of market participants: Customers, Directed Participants,⁵ Specialists,⁶ Registered Options Traders,⁷ SQTs,⁸ RSQTs,⁹ Broker-Dealers, Firms and Professional.¹⁰ Currently, the following rebates and fees apply to Single contra-side orders:

⁵ A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

⁶ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁷ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

⁸ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁹ An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such

	Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.20	\$0.25	\$0.23	\$0.00	\$0.00	\$0.20
Fees for Adding Liquidity	\$0.00	\$0.00	\$0.00	\$0.05	\$0.05	\$0.00
Fee for Removing Liquidity	\$0.25	\$0.33	\$0.33	\$0.45	\$0.45	\$0.40

The Exchange is proposing to amend the rebates and fees that apply to Single contra-side orders as follows:

	Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.26	\$0.23	\$0.23	\$0.00	\$0.00	\$0.26
Fees for Adding Liquidity	\$0.00	\$0.00	\$0.00	\$0.05	\$0.05	\$0.00
Fee for Removing Liquidity	\$0.29	\$0.35	\$0.37	\$0.45	\$0.45	\$0.45

In addition, the Exchange is proposing to amend its rebates and fees applicable to electronic auctions and the opening process. To add clarity to the rebates and fees surrounding electronic auctions and the opening process, the Exchange proposes to amend the text of the Fee Schedule to define “Complex electronic auctions” and “non-Complex electronic auctions.” The Exchange proposes to define a “Complex electronic auction” as one that includes, but is not limited to COLA. The Exchange proposes to define a “non-Complex electronic auction” as one

quotations electronically from off the floor of the Exchange.

¹⁰ The Exchange defines a “professional” as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter “Professional”).

that includes the Quote and Market Exhaust auction.¹¹ The Exchange also proposes to include the opening process within the definition of “non-Complex electronic auction” for purposes of assessing the Rebate for Adding Liquidity and the Fees for Removing Liquidity. The Exchange proposes to delete the current text related to the applicability of the Customer Rebate for Adding Liquidity and the Fees for Removing Liquidity in Part C and instead replace that text with an explanation of the rebates and fees as it relates to Complex or non-Complex electronic auctions.

Currently, a Customer Complex Order receives a Rebate for Adding Liquidity (as set forth in Part B) as part of a Complex Order Live Auction (“COLA”). Excluding COLA, during all other electronic auctions and the Exchange’s opening process, a Customer Complex Order receives a Rebate for Adding Liquidity (as set forth in Part B) when such Customer Complex Order is executed against a non-Customer (Specialist, ROT, SQT, RSQT, Professional, Firm or Broker-Dealer) contra-side Complex Order, or a non-Customer individual order or quote. For Customer orders that are not Complex Orders, a Customer receives a Rebate for Adding Liquidity of \$0.22 per contract for executions that occur as part of an electronic auction, including but not limited to the Exchange’s opening process, except when contra to another Customer order. A Customer will not be assessed a Fee for Removing Liquidity in an electronic auction and during the Exchange’s opening process. A Directed Participant is assessed a Fee for Removing Liquidity of \$0.25 per contract during the Exchange’s opening process.

The Exchange proposes to pay Customer executions that occur as part of a Complex electronic auction a Rebate for Adding Liquidity as set forth in Part B, as is the case today. Customer executions that occur as part of a non-Complex electronic auction would receive the Rebate for Adding Liquidity as set forth in Part A, except when contra to another Customer

¹¹ While PIXL is a non-Complex electronic auction, it is covered by a different pricing scheme. See Section IV of the Exchange’s Fee Schedule.

order. Today they receive a rebate of \$.22 per contract. Customers will not be assessed a Fee for Removing Liquidity for transactions that occur in either Complex electronic auctions or non-Complex electronic auctions as is the case today.

Currently, a Directed Participant is assessed a Fee for Removing Liquidity of \$0.25 per contract during the Exchange's opening process. A Specialist, ROT, SQT and RSQT are assessed a Fee for Removing Liquidity of \$0.27 per contract during the Exchange's opening process. Professional, Firm and Broker-Dealer Fees for Removing Liquidity(as set forth in Part B) apply to transactions resulting during the Exchange's opening process. The Exchange now proposes to assess the Fees for Removing Liquidity to all participants, except Customer, the fees in Part A for transactions during the opening process.¹² Today, Professional, Directed Participant, Firm, Broker-Dealer and Specialist, ROT, SQT and RSQT Fees for Removing Liquidity (as set forth in Part B) will apply to transactions resulting from electronic auctions.¹³ The Exchange now proposes to assess Professionals, Directed Participants, Firms, Broker-Dealers and Specialists, ROTs, SQTs and RSQTs the Fees for Removing Liquidity in Part B for executions that occur as part of a Complex Order electronic auction. The Exchange proposes to assess Professionals, Directed Participants, Firms, Broker-Dealers and Specialists, ROTs, SQTs and RSQTs the Fees for Removing Liquidity in Part A for executions that occur as part of a non-Complex electronic auction.

Finally, the Exchange proposes to remove language in Part B of the Section I. Specifically, the Exchange is removing "in all Select Symbols" language. The entire Part B applies to all Select Symbols and therefore the extra language is unnecessary.

¹² The Exchange is defining the opening process as a non-Complex Order auction.

¹³ Today, electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"), and Quote and Market Exhaust auctions. See Exchange Rules 1017 and 1082.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to increase the Rebate for Adding Liquidity for Customers is reasonable because the increase should incentivize Broker-Dealers to route Customer orders to the Exchange, which in turn should increase liquidity and benefit all market participants. The Exchange believes that the rate change is equitable and not unfairly discriminatory because it would apply uniformly to all Customers and also increase liquidity to the benefit of all participants. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to increase the Rebate for Adding Liquidity for Professionals to a rate that is equal to that of Customer, which is also the highest rebate available for a Single contra-side order. While the Exchange is increasing the Professional rebate to \$.26 per contract, it is also increasing the Professional Fee for Removing Liquidity to the highest fee assessed for a Single contra-side order along with Firms and Broker-Dealers. The Exchange believes that it is reasonable to pay a lower rebate to Directed Participants because market makers¹⁶ should benefit from increased Customer volume as well as other Broker-Dealers engaged in proprietary trading.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ The Exchange market maker category includes Specialists (see Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (see Rule 1014(b)(ii)(B)). The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

In addition, the Rebate for Adding Liquidity is equitable and not unfairly discriminatory for Directed Participants because it is the same for all market makers,¹⁷ \$0.23 per contract.

The Exchange believes that it is reasonable to increase the Customer Fee for Removing Liquidity because the Exchange is seeking to recoup the cost associated with paying an increased rebate to Customers. The Customer Fee for Removing Liquidity is also equitable and not unfairly discriminatory because it would remain at a lower rate as compared to other market participants. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to also increase the Fees for Removing Liquidity for Directed Participants and Specialists, ROTs, SQTs and RSQTs, to \$0.35 and \$0.37 respectively. The Exchange is not increasing the rebate for market makers even though it is increasing the fee because the Exchange does not believe that Specialists, ROTs SQTs and RSQTs need to be incentivized to add liquidity in the same way as a Directed Participant. As between these market makers, Directed Participants are being assessed the lower fee because Directed Participants, as compared to other market makers, have higher quoting obligations.¹⁸ The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess a Professional the same Fee to Remove Liquidity as Firms and Broker Dealers. The Exchange is increasing both the Professional Rebate to Add Liquidity and the Fee for Removing Liquidity in its proposal. Also, the Professional is obtaining a rebate while Firms and Broker-Dealers do not receive a rebate. This is the case with the Fee for Removing Liquidity in all Select Symbols for Complex

¹⁷ The Exchange market maker category includes Specialists (see Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (see Rule 1014(b)(ii)(B)).

¹⁸ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

Orders.¹⁹ In addition, the Exchange's Fees for Removing Liquidity are within the range of fees assessed by other options exchanges.²⁰

The Exchange is proposing to amend rebates and fees related to electronic auctions and the opening process in order that the applicability of the rebates and fees is consistent with whether the electronic auction or opening process involves a Complex Order. The Exchange proposes to pay rebates and assess fees for electronic auctions and the opening process by defining each electronic auction as either a Complex or a non-Complex electronic auction. Complex electronic auctions would be paid the rebates and assessed the fees in Part B and non-Complex electronic auctions would be paid the rebates and assessed the fees in Part A. The opening process will be defined for purposes of the fees and rebates as non-Complex and would be subject to the fees and rebates in Part A.

Therefore, the Exchange's proposal to eliminate the \$.22 rebate for single contra-side Customer executions that occur as part of an electronic auction, including but not limited to the opening process, except when contra to another Customer order and instead pay the increased Rebate for Adding Liquidity in Part A is reasonable because the Exchange will pay the rebate for a single contra-side order which is \$.26 per contract. The proposal is also equitable and not unfairly discriminatory because the Customer currently does not pay a Fee for Removing Liquidity and would be awarded the highest rebate among all market participants so long as the transaction is not contra another Customer and this would continue to be the case. In the event that the transaction is contra to another Customer, the rebate would not be paid and also no fee would be assessed to remove liquidity.

¹⁹ See Section I, Part B of the Exchange's Fee Schedule.

²⁰ See NASDAQ Stock Market LLC Rule 7050. See also NYSE ARCA, Inc. Fee Schedule.

Similarly, the proposal to assess Professionals, Directed Participants, Firms, Broker-Dealers, Specialists, ROTs, SQTs and RSQTs for transactions that occur as part of an electronic auction, except for COLA, the fees in Part A, instead of Part B is reasonable because those auctions do not relate to Complex Orders and should therefore be assessed the fees in Part A for single contra-side orders. The Exchange believes that the proposal is also equitable and not unfairly discriminatory because all other market participants, other than Customers, will be assessed fees based on whether the auction involves a Complex Order. The Exchange's proposal to assess the fees in Part B for COLA is reasonable, equitable and not unfairly discriminatory because COLA is a Complex Order electronic auction and therefore the fees in Part B, which relate to Complex Orders, are consistent with the type of auction where the transactions take place. The Exchange also believes the same is true for Customers with respect to distinguishing between Complex electronic auctions and non-Complex electronic auctions. In addition, the Exchange proposes to pay rebates and assess fees for the opening process as a non-Complex auction. The opening process would not involve a Complex Order and therefore would be paid rebates and assessed fees consistent with the Exchange's proposal to assess electronic auctions based on whether it relates to a Complex Order. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the rebates and assess the fees in Part A, related to single contra-side orders, for the opening process.

The Exchange believes that the technical amendments proposed herein are reasonable, equitable and not unfairly discriminatory because they would add clarity to the Fee Schedule.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays for options

overlying the various Select Symbols remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2011-162 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-Phlx-2011-162. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File No. SR-Phlx-2011-162 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill
Deputy Secretary

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²² 17 CFR 200.30-3(a)(12).